



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: MAY 05, 2023

IN THE MATTER OF:

Appeal Board No. 628413

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective August 5, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to August 5, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed March 10, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. We have determined that further testimony and evidence should be taken before the issue of misconduct is decided.

To that end, the parties are directed to produce all witnesses, if any, to the incident between the claimant and the president of the company, Uriah Paul Montclair, on August 5, 2022, so that they may be questioned about what they observed that day, from the time that the incident began to the claimant's departure from the premises. The Judge then shall question the claimant and Mr. Monclair in more detail about the incident, up to the claimant's departure; this should include which belongings the claimant gathered before

and after her discharge and where those items were located at the time. Both also should be questioned about their respective procedures for counting the inventory in question and how each differed from the other.

The claimant shall be confronted with the Department of Labor questionnaire (Form TCC 413.9) that she completed, in particular with respect to her response to Question Number 9. She shall be given an opportunity to specify what Mr. Montclair said to her that caused her to tell him "not to speak to [her] that way." She also should be questioned about why her response to that question omits much of the information concerning the circumstances leading to her discharge that she provided in her prior testimony. The document should then be entered into evidence. Mr. Montclair should have the opportunity to respond to the claimant's answer regarding what he allegedly said to her. The Department of Labor questionnaire (Form MC99) completed by Mr. Montclair should also be entered into evidence after the appropriate confrontation.

The Judge may take any other testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case is remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER